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United States of America
IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

No. 160

NEIL E. REID, Circuit Judge of the Sixteenth Judicial Circuit,
sitting in and for the County of Saginaw,
Petitioner and Defendant Below,

vs.

SECOND NATIONAL BANK AND TRUST COMPANY,
of Saginaw, Michigan, individually, and as Trustee under
the Ninth and Tenth Paragraphs of the Will of
Arthur D. Eddy, Deceased, and
CHARLOTTE EDDY MORGAN,
Respondents and Plaintiffs Below

SUPPLEMENTAL AND REPLY BRIEF FOR
PETITIONER, NEIL E. REID

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I. Recently this Honorable Court reviewed, by certiorari, the Supreme Court of Michigan, in *U. S. v. Shaw* (309 U. S. 495) and reversed the Michigan Court's Judgment for lack of jurisdiction.

It would seem reasonable, therefore, that the writ also be granted in the case at bar—when the Supreme Court

of Michigan has failed to follow several specific jurisdictional rules uniformly laid down by this Court. For here, under repeated decisions of this Court, the Federal Equity Court had no jurisdiction to enter judgment winding up an estate pending in the Probate Court for thirteen years.

(a) *Princess Lida v. Thompson*, 305 U. S. 456, passing on an attempted approval of a State Probate Court's testamentary trustee's management and losses.

(b) *Byers v. McAuley*, 149 U. S. 608, setting aside an attempted assignment of the residue of an estate pending in the Pennsylvania Probate Court.

(c) *Taylor v. Sternberg*, 293 U. S. 470, passing on an attempted allowance by a Court (without jurisdiction) of a receiver's attorneys' fees.

II. The basis of the judgment of the Supreme Court of Michigan of April 20, 1943, (review here asked) was that remainderman Cleveland *was estopped* to raise the question of lack of jurisdiction of the Federal District Court, by her failure to raise such question in the Federal Court.

This Court has consistently held that jurisdiction can not be conferred upon the Federal Courts by estoppel or consent.

Vallely v. Insurance Company, 254 U. S. 348.
U. S. v. Guaranty Co., 309 U. S. 506.

III. Lack of jurisdiction of the subject matter of a Federal District Court presents a Federal Question—whether raised in that Court or any other Court—

Stoll v. Gottlieb, 305 U. S. 165.
Indianapolis v. Bank, 314 U. S. 63.
U. S. Guaranty Co., 309 U. S. 506.
Donahue v. Vosper, 243 U. S. 59.

In its opinion in *Donahue v. Vosper, supra*, this Court said:

“Here the contentions of the parties turn upon the effect of the decree which was rendered by consent in the suit of the United States against the Canal Company, and this makes, it is contended, a federal question.

Defendants, however, assert that the decree does *not present a federal question* and that, besides, it was not claimed or urged as such by plaintiff in the state courts but appears for the first time in the petition for writ of error, and defendants refer to the bill of complaint to sustain their assertion.

But the Supreme Court in its opinion declared that a contention of plaintiff invoked ‘the effect of the decree of the federal court.’ * * *

The decree, therefore, was made an element in the decision against plaintiff, and it was claimed by him to be an element in his favor. The motion to dismiss is, therefore, denied. * * *

If there is any uncertainty as to whether a Federal Question exists, this Court will review a State Court Judgment on Certiorari and remand, if necessary.

Minnesota v. National Tea Co., 309 U. S. 551.

IV. REPLY BRIEF AND CORRECTIONS IN RESPONDENT'S BRIEF.

Respondent's Brief is taken up almost entirely with the minor question of claimed fraud in the affirmance on appeal (without opinion) of the Federal Judgment of February 7, 1939, and which subject was raised by Petitioner's application to prevent a waiver thereof.

It is respectfully suggested that Respondent's Brief does not seriously attempt to answer Petitioner's claim:

(1) That the ground of estoppel relied upon by the Supreme Court of Michigan is erroneous, and

(2) That consent can not confer jurisdiction of the subject matter on a Federal Court—either originally or in removal cases.

Turning to Respondent's Brief, we find but seven points discussed,—no one of which could possibly confer jurisdiction of the subject matter where none exists.

(1st) The only point of any consequence raised by respondent's brief is stated on page 4 thereof, as—

“The answer to the petition for prohibition set up no federal question whatsoever.”

But Petitioner's answer in the Supreme Court of Michigan did clearly set up the claim that the Federal Judgment was void, as without jurisdiction of the subject matter, see particularly pages 7 and 28 to 32 of the answer.

Moreover—it is only necessary, as Justice Story said in *Crowell v. Randell*, 10 Pet. U. S. 368, 397, that:

“* * * it appears by clear and necessary intentment, that the question must have been raised, and must have been decided in order to have induced the judgment. * * *”

In Petitioner's Motion for Rehearing filed in the Supreme Court of Michigan, at pages 2, 3 and 4, the Federal Question of Lack of Jurisdiction of the subject matter is argued at length.

That a Federal Question was clearly raised and involved in the Supreme Court of Michigan's judgment of April 20, 1943, (review here asked) is admitted by the respondent's brief at top of page 3, where it is stated:

"Cynthia Mills Cleveland on January 15, 1942, filed a new bill in the Circuit Court for the County of Saginaw, in Chancery, alleging that—

1. In the former litigation said Circuit Court for the County of Saginaw in Chancery was without jurisdiction (asserting the jurisdiction of the Probate Court for the County of Saginaw to be exclusive) and hence the Federal Court on removal obtained no jurisdiction and the decree was a nullity."

(2nd) The second point made by respondent's brief is that remainderman Cleveland filed a cross-bill in the Federal Court Judgment case.

Even so—a cross-bill or claim could not confer jurisdiction of the subject matter upon the Federal District Court, or any other Court, and it was so held in:

U. S. v. Guaranty Co., 309 U. S. 506;

U. S. v. Shaw, 309 U. S. 495.

The important facts relating to the cross-bill in the case at bar are:

(a) The Testamentary Trustee (appointed by the Probate Court) filed an original bill in the State Equity Court asking judgment that remainderman Cleveland's trust "corpus" valued at \$600,000 at testator's death, was only \$20,000 par value of a family holding company's nominal shares.

(b) Upon removal to the Federal District Court by defendant Cleveland—the Trustee abandoned such an attempt and filed a clear cut trustee's final accounting bill admitting heavy losses—and asking justification because of the depression.

(c) Remainderman Cleveland answered—asked affirmative relief for such Trustee's negligence and

made the dummy directors of the small family holding company also defendants—if, as stated in the cross-bill, that was necessary to protect her interests against the admitted losses by the Trustee in the trust corpus, consisting of the assets of the family holding company, owned entirely by the testator at his death.

That is all there is to respondent's efforts to distract attention from the lack of jurisdiction of the subject matter of the Federal Court, to enter the judgment of February 7, 1939.

(3rd) Respondent Trustee (bottom of page 4 of its Brief) says that whether the State Equity Court had "jurisdiction on the first bill (that filed by the Trustee) is solely a question of Michigan Law. If it did then the Federal Court had at least the same jurisdiction after removal."

To which claim, Petitioner Reid begs to respectfully reply that—

(1) The Supreme Court of Michigan (as pointed out in Petitioner's main brief at pages 51 and 52) did not decide at all that the Michigan Equity Court had jurisdiction to allow a Probate Court testamentary trustee's final account and assign the residue of an estate pending in the Probate Court.

(2) What the Supreme Court of Michigan did decide was that remainderman Cleveland (by failing in the Federal Court to raise the jurisdictional question) had thereby *estopped* herself to question the validity of the Federal Judgment in a second cause in the State Courts.

(3) It does not follow at all that if the State Equity Court had jurisdiction by the trustee's original

bill to construe a will—that it also had jurisdiction *by the trustee's amended bill* to allow a Probate Court Trustee's final accounting. But the Supreme Court of Michigan did not decide this question at all, as was pointed out in Petitioner's main brief, pages 51 and 52.

On removal, a Federal Equity Court does not have jurisdiction, just because the State Court did, if such was the case.

The Federal Equity Court is a Court of limited jurisdiction—and often on removal does not have jurisdiction—even though jurisdiction existed in the State Court.

See the rule stated in *Armstrong v. Trust Co.*, 126 Fed. (2d) 164 (5 C. C. A.) Syl. No. 4.

(4th) At the bottom of page 4 of Respondent Trustee's brief is cited this court's recent decision in

Freeman v. Bee Machine Co., 87 L. Ed. 1075; ...
U. S. ...

on the point that one of the small family holding company's directors was made a party defendant to remainderman Cleveland's cross-bill.

Freeman v. Bee Company, *supra*, merely holds that where a Federal Court had original jurisdiction, an amendment to the bill might be allowed after removal from the State Court.

The Federal Judgment of February 7, 1939 dismissed this so-called cross-bill stressed so much by the Trustee—and entered the Federal Judgment upon the Trustee's amended Probate accounting bill.

Even had some relief been granted against the cross-defendant director, Mrs. Morgan, it could not validate the Federal Judgment approving the Trustee's final Probate

Accounting and assigning the residue of Mr. Eddy's Estate—an act of assumed jurisdiction expressly set aside by this Court in *Byers v. McAuley*, in 149 U. S. 608.

(5th) At top of page 5 of respondent's brief—it is said that the Cleveland bill in the State Court, challenging the validity of the Federal Judgment, because of claimed fraud in the affirmance of the Federal Judgment on appeal, presents “no Federal Question.”

This claim of fraud is only important, if this Court determines there was jurisdiction of the subject matter in the Federal Court, to allow a Probate Trustee's final accounting and assign the residue of the Eddy Estate Trusts. That is the important question on this application, and the one which it seems Respondent's brief avoids discussion of.

But whether or not the Trustee's fraud (admitted by the Trustee's motion to dismiss to have procured the Appellate Court's affirmance of the judgment without opinion) is strictly a Federal Question, the question goes to the validity of an authority exercised under the United States, and may rightly be considered to involve principles usually applicable to all Federal Questions relating to the validity of Federal Judgments.

(6th) On page 5, second paragraph, Respondent Trustee argues that no Federal Question is presented by this Court's denial of certiorari in 313 U. S. 594, after affirmance of the Federal Judgment was had in the Court of Appeals without opinion.

No claim of fraud in the affirmance of the judgment was made or claimed in the petition for certiorari denied in 313 U. S. 594.

Here fraud is admitted by the motion to dismiss the Cleveland bill.

—(7th) Finally, on page 5, Respondent argues that the petition for certiorari does not sufficiently point out the presence of federal questions.

In reply, it is respectfully submitted that the petition for Writ of Certiorari distinctly and repeatedly claims—

(1) the Federal Judgment of February 7, 1939, is void as not within the Federal Court's jurisdiction of the subject matter, and that

(2) the judgment of the Supreme Court of Michigan of April 20, 1943, was clearly erroneous in setting up an estoppel against remainderman Cleveland and holding she could not challenge in a second action the validity of the first judgment, as was done in *U. S. v. Guaranty Co.*, 309 U. S. 506.

It is respectfully submitted that the judgment of April 20, 1943, of the Supreme Court of Michigan is opposed to every jurisdictional rule carefully laid down by this Honorable Court limiting the power of a Federal Equity Court to interfere in the administration by the Probate Courts throughout the Country, of the Estates of Deceased Persons.

Respectfully submitted,

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